IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.CJ.

APPEAL (LODGING) NO.514 OF 2006
IN
CHAMBER SUMMONS NO.1152 OF 2005
IN
EXECUTION APPLICATION (L) NO.384 OF 2004

Malvika Sonie Narayan and others ..Appellants
v/s.
M/s.Niraj Moview and others .. Respondents

Mr. Rahul Chitnis with Mr. A.S. Kamat i/by M/s. V. Deshpande & Co. for the Appellants.

Mr. Rajiv Narula with Mr. Haritosh Dasgupta i/by M/s. J. Narula & Associates for the respondents.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 12TH SEPTEMBER, 2006.

P.C.

We heard Mr. Rahul Chitnis, the counsel for the appellants. He submitted that the award dated 22nd March, 2004 is nullity having been given against the dead person and such award is not executable. He relied upon the decision of this court in the case of Rampratab Brijmohandas and others v. Gaurishankar Kashiram, 1924 Bombay 109 in support of his contention that where a suit is brought against a person in the name in which he carries on business, such suit is essentially one against him and if dies before the suit and a suit is brought against him in the name in

which he carried on business, the suit is against a dead person and it is nullity from its inception.

2. That Bhappi Sonie was the sole proprietor of M/s. Bhappi Sonie Production, is not in dispute. Bhappi Sonie died on 5th September, 2001. It appears that the disputes and differences arose in respect of distribution/exhibition/exploitation of the picture “Teri Pyar Ki Kasam” between the present respondent- M/s. Niraj Movie, Mumbai and M/s. Bhappi Sonie Production. The complaint in this regard was made to the Adjudication Sub-Committee of Indian Motion Picture Distributors' Association (IMPDA). It is pertinent to note that immediately after the death of Bhappi Sonie, on 30th October, 2001, his three legal heirs viz. Ms. Sagarika (daughter of Shri Bhappi Sonie), Ms. Malavika (daughter of Shri Bhappi Sonie) and Shakti Sonie (son of Shri Bhappi Sonie) sent an affidavit to Indusind Bank, Bandra Branch, stating thus-

> “We, Ms. Sagarika (daughter of late Shri Bhappi Sonie), Ms. Malavika (daughter of late Shri Bhappi Sonie) and Mr. Shakti Sonie (son of late Shri Bhappi Sonie) of Mumbai, Indian inhabitant residing at 21, Sheffield Towers, Lokhandwala Complex, Andheri (West), Mumbai 400 058, do hereby jointly and severally states as under:-
>
> That we are the legal heirs of our father late Shri Bhappi Sonie who expired on 05 September 2001 leaving us as the only legal heirs.
>
> That our father was carrying on business of production of Hindi Movie in the firm name and style of M/s. Bhappi Sonie Productions. He was the sole proprietor of the said firm.

That for production of a movie, he had obtained finances from M/s. Aasia Management & Consultancy Pvt.Ltd., under an agreement dated 10th October 2000 on the terms and conditions contained therein. Under the said agreement, the said movie was described as `Rootha Na Karo' now named as `Tere Pyar Ki Kasam'. That the said movie could not be completed during the lifetime. That for the purpose of monitoring the finance obtained from M/s.Aasia Management and Consultancy Pvt.Ltd. And disbursal of the expenses a bank account `Tere Pyar Ki Kasam' was opened in the Indusind Bank, Bandra Branch. That Shri Bhappi Sonie had executed a power of attorney in favour of Mr. Sanjay Jumani as a representative of the said M/s.Aasia Management and Consultancy Pvt.Ltd. for operation of the said account.

Thereafter the death of Shri Bhappi Sonie as the proprietor of the said firm, we have become entitled to operate the said Bank account with Indusind Bank, Bandra Branch.

That we have authorised M/s. Aasia Management & Consultancy Pvt.Ltd. To complete the said film as `Tere Pyar Ki Kasam' by putting in necessary funds so as to enable M/s.Aasia Management & Consultancy Pvt.Ltd. To recover its dues under the said agreement by selling the film rights to the distributors and others and pay the balance if any to us.

We therefore hereby authorise M/s. Aasia Management and Consultancy Pvt.Ltd. To operate the said Bank account fully and effectually by nominating any person of their choice.

We say that the authority give hereunder shall be irrevocable till all the moneys due to M/s. Aasia Management and Consultancy Pvt.Ltd. Are recovered in full.

> Solemnly affirm at Mumbai on this 30th day of October, 2001."

3. Copy of this affidavit was admittedly sent by the aforesaid three legal heirs to the present respondents alongwith the letter dated 10th February, 2003.

4. It is also pertinent to note that in the matter of adjudication of disputes between the respondents and Bhappi Sonie Productions before the Adjudication Sub-Committee, the present appellants gave an undertaking on 19th September, 2003 thus-

> "WHEREAS disputes and differences have arisen and are subsisting between us, the undersigned in respect of distribution/exhibition/ exploitation of the picture `TERE PYAR KI KASAM'.
>
> Now we, the undersigned, do hereby jointly agree to submit all such disputes, differences and claims to the adjudication Sub committee of the Indian Motion Pictures Distributors' Association, Bombay for adjudication in accordance with the Rules and bye laws framed by the Association in that behalf and we irrevocably agree and accept that the decision of the Chairman of the adjudication sub-committee, subject to ratification and confirmation by the Executive Committee, shall be final and binding on us."

5. The perusal of the undertaking leaves no manner of doubt that the matter of adjudication of disputes by the Adjudication Sub-Committee of IMPDA was with with regard to the disputes and differences between the present appellants and the

respondents as in the undertaking it is clearly stated, “Whereas disputes and differences have arisen and are subsisting between us” (emphasis supplied).

6. That the appellants participated in the aforesaid adjudication proceedings before the Adjudication Sub-Committee is not in dispute. In the backdrop of these facts, the submission of the counsel for the appellants that the arbitration proceedings were initiated against the dead person and, therefore, nullity is misconceived. As observed above, the appellants were well aware and rather they admitted before the Adjudication Sub-Committee of IMPDA that the disputes and differences have arisen and were subsisting between them and the present respondent in respect of distribution/exhibition/exploitation of the picture `Tere Pyar Ki Kasam'. The fact situation does not show that the arbitration proceedings were held against the dead person or the award has been passed against the dead person.

7. The appellants, as a matter of fact, were parties to the arbitration proceedings for and on behalf of Bhappi Sonie Production. They represented Bhappi Sonie Production before the Arbitral Tribunal and also irrevocably agreed and accepted the decision of the Adjudication Sub-Committee of IMPDA, subject to ratification and confirmation of the Executive Committee as final and binding on them. It is too late in the day for the appellants to build up the case on unsustainable premise that the arbitration proceedings were held against the dead person and are nullity and the award passed in such proceedings is also nullity. It is true and needs no elaboration that the suit brought against the dead person is a nullity from its inception where such suit is brought against the

person in the name in which such person carries on business. However, the peculiar factual position noticed above in the present case does not lead us to hold that the arbitration proceedings and the award are nullity.

8. The impugned order, thus, does not call for any interference. Appeal is dismissed in limine.

9. The oral prayer made by the counsel for the appellants to continue the ad-interim order dated 28th July, 2006 is rejected.

10. One week time is granted to the appellants to file an affidavit as directed in the impugned order dated 3rd April, 2006.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)